

FIRST REGULAR SESSION

SENATE BILL NO. 327

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 9, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1400S.011

AN ACT

To repeal sections 390.030, 390.201, and 622.550, RSMo, and to enact in lieu thereof seven new sections relating to commercial motor vehicles.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 390.030, 390.201, and 622.550, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 304.233, 304.234, 390.030, 390.201, 622.552, 622.554, and 622.550, to read as follows:

304.233. The general assembly hereby occupies and preempts the entire field of legislation touching in any way the enforcement of state commercial vehicle laws to the complete exclusion of any order, ordinance, or regulation by any political subdivision of this state. No local law enforcement officer or local agency shall perform commercial motor vehicle enforcement officer or local agency shall perform commercial motor vehicle enforcement as described in sections 304.170 to 304.230. The enforcement of the commercial vehicle violations described in sections 304.170 to 304.230 shall be exclusively enforced by the state and its duly authorized agencies. No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance, or regulation concerning in any way the enforcement of commercial motor vehicle laws. Any existing or future orders, ordinances, or regulations in this are hereby and shall be null and void. The provisions of this section do not preclude a county, city, town village, municipality, or other political subdivision from adopting any order, ordinance, or regulation which restricts the commercial vehicle equipment, size, travel, weight, or height on roads which are not state or federal designated roads or roads which are not maintained with state or federal monies.

304.234. The superintendent of the highway patrol shall apply for all federal funding which is currently available or may become available which has been formerly allocated or granted to local political subdivisions for the enforcement

of commercial motor vehicle enforcement with existing staff. The state agency or department which is responsible for the granting of federal funding for the purpose of commercial motor vehicle enforcement shall make every effort to assist the superintendent of the highway patrol in the receipt of such grants for the purpose of commercial motor vehicle enforcement with existing staff.

390.030. 1. The provisions of this chapter shall not apply to:

- (1) School buses;
- (2) Taxicabs;
- (3) Motor vehicles while being used exclusively to transport;
 - (a) Stocker and feeder livestock from farm to farm, or from market to farm,
 - (b) Farm or dairy products including livestock from a farm or dairy,
 - (c) Agricultural limestone or fertilizer to farms,
 - (d) Property from farm to farm,
 - (e) Raw forest products from farm, or
 - (f) Cotton, cottonseed, and cottonseed hulls;
- (4) Motor vehicles when operated under contract with the federal government for carrying the United States mail and when on a trip provided in the contract;
- (5) Motor vehicles used solely in the distribution of newspapers from the publisher to subscribers or distributors;
- (6) The transportation of passengers or property performed by a carrier pursuant to a contract between the carrier and the state of Missouri or any civil subdivision thereof, where the transportation services are paid directly to the carrier by the state of Missouri or civil subdivision;
- (7) Freight-carrying motor vehicles duly registered and licensed in conformity with the provisions of chapter 301, RSMo, for a gross weight of six thousand pounds or less;
- (8) The transportation of passengers or property wholly within a municipality, [or between contiguous municipalities, or within a commercial zone as defined in section 390.020, or within a commercial zone established by the division of motor carrier and railroad safety pursuant to the provisions of subdivision (4) of section 390.041;] provided[,] the exemption in this subdivision shall not apply to motor carriers of persons operating to, from or between points located wholly or in part in counties now or hereafter having a population of more than three hundred thousand persons, where such points are not within the same municipality and to motor carriers of commodities in bulk to include liquids, **and** in tank or hopper type vehicles[, and in a commercial zone as defined herein or by the division];
- (9) Street railroads and public utilities other than common carriers as defined in section 386.020, RSMo;
- (10) Motor vehicles whose operations in the state of Missouri are interstate in character and are limited exclusively to a municipality and its commercial zone;

(11) Motor vehicles, commonly known as tow trucks or wreckers, designed and exclusively used in the business of towing or otherwise rendering assistance to abandoned, disabled, or wrecked vehicles;

(12) Motor vehicles while being used solely by a group of employees to commute to and from their place or places of employment, except that the motor vehicle must be driven by a member of the group.

2. Nothing contained in this section shall be deemed to exempt the vehicles of driveaway operators.

3. Except for the provisions of subdivision (5) of section 390.041, the provisions of this chapter shall not apply to private carriers.

4. No agency of state government nor any county or municipality or their agencies shall discriminate against any motor carrier or private carrier or deny any such carrier operating a motor vehicle public access to any building, facility or area owned by or operated for the public unless such discrimination or denial is based solely on reasonable vehicle size or weight considerations. The provisions of this subsection shall only apply in cities not within a county and first class counties with a charter form of government which adjoin any city not within a county.

390.201. Subject to any exceptions which are applicable under section 307.400, RSMo, or subsection 6 of section 390.063, the officers and commercial motor vehicle inspectors of the state highway patrol, the enforcement personnel of the [division of motor carrier and railroad safety] **state highways and transportation commission**, and other authorized peace officers of this state and any civil subdivision of this state, may enforce any of the provisions of Parts 350 through 399 of Title 49, Code of Federal Regulations, as those regulations have been and may periodically be amended, as they apply to motor vehicles and drivers operating in interstate or intrastate commerce within this state; except that the enforcement personnel of the [division of motor carrier and railroad safety] **state highways and transportation commission and other authorized peace officers of this state and any civil subdivision of this state** shall be authorized to enforce those regulations wholly within the terminals of motor carriers and private carriers by motor vehicle.

622.552. 1. Motor carriers may voluntarily request an educational compliance contact to be conducted by the state highways and transportation commission pursuant to sections 390.201 and 622.550 to determine whether the motor carrier is currently in compliance with all relevant statutes, rules, and regulations. If deficiencies are discovered by the commission during the voluntary educational compliance contact, the carrier shall not be subject to fines or penalties. The following restrictions apply to such educational compliance contacts:

(1) Audits are to be conducted with existing staff;

(2) Motor carriers may request only one educational compliance contact per five-year period;

(3) No motor carrier may have a second voluntary educational compliance contact unless a compliance review has been performed;

(4) A request for an educational compliance contact shall not be a rationale for the state highways and transportation commission to perform a compliance review; and

(5) No motor carrier who is the subject of a current complaint investigation or has a pending prosecution case with the state highways and transportation commission shall be eligible for an educational compliance contact.

2. The highways and transportation commission shall:

(1) Keep a list of all motor carriers requesting an educational compliance contact and if more requests are made than education compliance contact slots available, the educational compliance contacts shall be conducted on a first-come, first-serve basis;

(2) Start a new list of educational compliance contact requests each year starting on the first of October and set up a mechanism which manages the educational compliance contact requests in the most fiscally efficient and materially fair manner;

(3) Ensure that the state highways and transportation commission does not exhibit a pattern of enforcement audit bias against any motor carrier who has requested an educational compliance contact, but has failed to receive one;

(4) Implement rules and regulations as necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void; and

(5) One-third of the total number of educational compliance contacts performed shall be based on the total number of compliance reviews performed in the prior fiscal year.

3. The highways and transportation commission may, in its discretion, increase the number of educational compliance contacts to fifty percent of the total compliance reviews performed in the prior fiscal year.

4. All records related to the request for educational compliance contacts shall be considered open under chapter 610, RSMo.

5. Any pattern of abuse related to educational compliance contacts conducted or actions resulting from such contacts by the state highways and transportation commission is admissible in the administrative hearing commission or courts as evidence of abuse of administrative discretion. Upon such finding the court may award attorney's fees.

6. If the highways and transportation commission discovers a violation that presents a safety issue for the traveling public while conducting an educational compliance contact under this section, the commission may take any legal actions necessary to shut down the operation of the motor carrier, but the commission shall not impose a fine for the violation.

622.554. 1. The motor carrier shall have sixty days from the written release of compliance review findings or educational compliance contact findings sent by certified mail from the state highways and transportation commission to appeal the decision of the commission regarding the compliance review findings, educational compliance contact findings or any other allegations of misconduct by the commission, to the administrative hearing commission. All written findings shall contain a clearly visible message in at least sixteen point type as follows: "YOU HAVE THE RIGHT TO CONTEST THESE FINDINGS TO THE ADMINISTRATIVE HEARING COMMISSION (include current address, phone, and email) WITHIN SIXTY DAYS, WHICH IS (include exact date). THE ADMINISTRATIVE HEARING COMMISSION WILL PROVIDE YOU AN OPPORTUNITY TO APPEAL THIS DECISION AND GIVE YOU A PROCEEDING WITH DUE PROCESS."

2. The provisions of chapter 536, RSMo, shall apply to any complaints or actions referred to the administrative hearing commission.

3. In resolving any deficiency in compliance review findings or educational compliance contact findings, the state highways and transportation commission shall not offer a settlement agreement to a motor carrier unless the commission has advised the motor carrier in writing of the right to file a complaint concerning the findings of the audit with the administrative hearing commission as provided by chapter 621, RSMo. All offers of settlement shall contain a clearly visible message in at least sixteen point type as follows: "IF YOU CHOOSE TO CONTEST THIS SETTLEMENT YOU MAY APPEAL TO THE ADMINISTRATIVE HEARING COMMISSION (include current address, phone, and email) WITHIN (expressed algebraically as the certified mail settlement offer send date minus the certified mail compliance review or educational compliance contact findings send date)

DAYS or (calculate and include the exact date). THE ADMINISTRATIVE HEARING COMMISSION WILL PROVIDE YOU AN OPPORTUNITY TO APPEAL THIS DECISION AND GIVE YOU A PROCEEDING WITH DUE PROCESS." Any settlement agreement offered by the state highways and transportation commission shall be made within thirty days after the written findings are sent by certified mail.

4. Except on issues discovered in the process of a mechanical inspection regarding safety of the actual operating equipment, the burden of proof in all other circumstances shall be on the commission.

622.550. Subject to any exceptions which are applicable under section 307.400, RSMo, or subsection 6 of section 390.063, RSMo, the officers and commercial motor vehicle inspectors of the state highway patrol, the enforcement personnel of the [division of motor carrier and railroad safety] **state highways and transportation commission**, and other authorized peace officers of this state and any civil subdivision of this state, may enforce any of the provisions of Parts 350 through 399 of Title 49, Code of Federal Regulations, as those regulations have been and may periodically be amended, as they apply to motor vehicles and drivers operating in interstate or intrastate commerce within this state; except that the enforcement personnel of the [division of motor carrier and railroad safety] **state highways and transportation commission and other authorized peace officers of this state and any civil subdivision of this state** shall be authorized to enforce those regulations only within the terminals of motor carriers and private carriers by motor vehicle.

Bill

Copy